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C O N F I D E N T I A L SECTION 01 OF 04 USUN NEW YORK 000253

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TAGS: [PTER](#) [PREL](#) [PARM](#) [PINR](#) [PREF](#) [MASS](#) [SY](#) [LE](#)
SUBJECT: NEXT STEPS ON LEBANON TRIBUNAL: TRANSITIONING FROM
UNIIIC TO THE TRIBUNAL

REF: A. BEIRUT 350

[B](#). USUN 224

[C](#). USUN 220

Classified By: Ambassador Alejandro D. Wolff, per 1.4 (b) and (d).

[1](#). (C) Summary. During meetings in New York the week of March 10-14, UNIIIC Commissioner and Special Tribunal for Lebanon (STL) Prosecutor-designate Daniel Bellemare argued that UNIIIC's mandate, which is scheduled to expire June 15 absent action by the Security Council, should be extended until at least the end of 2008 in order to "manage expectations" that indictments will be filed soon. The clear implication of his request was that UNIIIC does not yet have a case to prosecute with regard to the Hariri assassination. Bellemare also argued that he needed more time to use the Commission's Chapter VII authority to compel cooperation from Syria as well as to continue providing investigative assistance to the Lebanese authorities into the 20 other terrorist attacks perpetrated in Lebanon. He gave P-3 delegations different answers about whether he could play the roles of UNIIIC Commissioner and Prosecutor simultaneously. In order to clarify the options for the transition from UNIIIC to the STL, P-3 Deputy PermReps met UN Legal Counsel Nicolas Michel on March 18 to solicit his views. The P-3 emphasized the need to continue demonstrating progress in setting up the Tribunal, to preserve the Commission's unique Chapter VII authorities if useful to Bellemare, and to plan a strategy for the transition well before the expiration of UNIIIC's mandate on June 15, 2008. The P-3 also made clear that if Bellemare wants an extension of UNIIIC's mandate, he must clearly request one from the Security Council.

[2](#). (C) Summary, cont'd. Michel agreed that the UN must continue to demonstrate progress in setting up the Tribunal. He reported that Bellemare would either make a request for a UNIIIC extension in his next report to the Council, scheduled to be issued March 27, or send a letter to the SYG to this effect. Michel identified five options for the transition which he said were defensible from a legal perspective: 1) let UNIIIC's mandate expire and force Bellemare to become Prosecutor on June 16; 2) dual-hat Bellemare by operating UNIIIC and the STL simultaneously; 3) give Bellemare the option to dual-hat himself when he deems it useful; 4) extend UNIIIC for one last time until the end of 2008 and designate Bellemare Prosecutor immediately afterward; and 5) extend UNIIIC without taking any decision on when Bellemare will assume his prosecutorial duties. The French suggested that dual-hatting Bellemare as UNIIIC Commissioner and STL Prosecutor could be complicated by Article 4 of the STL Statute, which requires the Tribunal to request that the GOL defer to its competence within two months of the Prosecutor's assumption of duties. End Summary.

[3](#). (C) COMMENT: We agree that preserving UNIIIC's unique Chapter VII authorities will ensure Bellemare retains a

strong tool for any eventual prosecution. We also believe we must keep up the pressure on him to deliver indictments as soon as possible. Milestones such as the Prosecutor assuming his duties are an important way of demonstrating that the Tribunal is a reality and cannot be bargained away. That said, Bellemare himself is opposed to the idea of dual-hatting by operating UNIIIC and the STL simultaneously, and forcing him to assume the duties of the Prosecutor at an early point -- while politically appealing -- offers few concrete benefits. Dual-hatting Bellemare prior to the extension of the UNIIIC mandate will also be difficult to achieve in the Council because Russia and others have long argued that the two entities should not/not operate in parallel and that the STL need not be operationalized until the UNIIIC investigation has concluded. Regardless of which option we choose, we must handle the question of designating Bellemare the Prosecutor very discreetly, lest we give the Russians and others reason to complicate an extension of UNIIIC,s mandate. END COMMENT.

Bellemare: Extend UNIIIC and Manage
Expectations8 for Tribunal Indictments

14. (C) During his consultations in New York last week, UNIIIC Commissioner and Prosecutor-Designate Daniel Bellemare gave P-3 PermReps slightly different accounts of his views on the transition from UNIIIC to the STL. Bellemare emphasized the need to "manage expectations" for indictments with Amb. Khalilzad and sought U.S. assistance with the investigation (ref A), but did not explicitly request an extension of UNIIIC's mandate. By contrast, in subsequent meetings with the French and the British, he asked them to support an extension until at least January 2009, stressing to the UK

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that he wants to preserve UNIIIC,s Chapter VII authority and its ability to continue providing assistance to the Lebanese on the investigation of the 20 terrorist attacks other than the Hariri assassination. Bellemare also reportedly told the French that he opposed having UNIIIC operate simultaneously with the Tribunal because of possible confusion over jurisdiction, and because that this scenario would still unrealistically raise expectations for indictments. When Amb Khalilzad raised the idea of dual-hatting Bellemare as Commissioner and Prosecutor, however, Bellemare did not express any objections.

15. (C) Amb Khalilzad told Bellemare the U.S. would try to help him by considering his requests for seconded investigators and intelligence sharing if possible, but he emphasized that UNIIIC should help itself by using tools such as its Chapter VII authority, and should work as quickly as possible to build a good case. Bellemare took the point about Chapter VII and said he planned to use this authority once he had identified the right targets and determined the right time. "I must know what I,m looking for in Syria," Bellemare said, before he demands cooperation from certain officials. On the timing of indictments, he recalled that the International Criminal Tribunal for Yugoslavia (ICTY) took two years to file indictments after it was created (he said ICTY was preceded by a Committee of Experts investigation similar to UNIIIC) and that the U.S. had taken much longer to file indictments in the Khobar Towers case. As Prosecutor, Bellemare said, he must build a case beyond a reasonable doubt, and he underlined his intention to be "safe rather than sorry."

P-3 Seeks Clarity from Michel

16. (C) Following their consultations with Bellemare, P-3 Deputy PermReps met UN Legal Counsel Nicolas Michel on March 18 to explore the various options regarding the transition from UNIIIC to the STL, in order to clearly present the issue to capitals for consideration. P-3 DPRs agreed that the UN

must continue to demonstrate progress in setting up the STL, but they also agreed that there are important reasons to consider an extension of UNIIIC's mandate, including its Chapter VII authority and its ability to provide investigative assistance to the other 20 terrorist attacks. They emphasized that if Bellemare wants an extension of UNIIIC's mandate, he must clearly request one in his next report to the Council, to facilitate that outcome in the Council. (Note: Bellemare's next report to the Council is due on March 27, which will be his last scheduled report before the UNIIIC mandate expires on June 15, 2008. End Note.)

¶7. (C) Michel agreed that the UN must continue to show progress in making the Tribunal a reality. In this regard, he also expressed concern about the effect of rumors that certain Middle Eastern countries want to make deals to immunize Syrian President Asad's family from the Tribunal. Noting the UN's recent progress in setting up the STL, including the appointment of a Registrar and success in fundraising, Michel identified the start of the prosecutor's functions as the next important step in operationalizing the STL. He emphasized that the UNSC must decide earlier than June 15 what to do with UNIIIC's mandate) in part to ensure the retention of skilled UNIIIC staff who otherwise might depart absent direction about the Commission's future) and that Bellemare must therefore make his views known in the near future. Confirming that Bellemare believes he will not be ready to assume his prosecutorial duties until January 2009 at the earliest, Michel said Bellemare had agreed to either make a request for a UNIIIC extension in his next report to the Council or submit a separate letter to this effect to the SYG.

Five Options With Jurisdictional Caveat

¶8. (C) Michel outlined five options to deal with the transition between the UNIIIC and the STL, as described below beginning in para 11. Although he expressed a preference that the UNIIIC and STL not operate simultaneously, to avoid the budgetary complications involved in drawing funding from both UNIIIC (which is paid for from the assessed UN budget) and the STL (which is paid for by voluntary national donations), he saw no problem from a legal perspective with dual-hatting Bellemare. French DPR Lacroix argued that dual-hatting Bellemare as UNIIIC Commissioner and Prosecutor could be complicated by Article 4 of the STL Statute, which requires the Tribunal to request that the Lebanese judicial authorities defer to its competence within two months after

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the Prosecutor assuming his duties, and transfer their files to the STL. Michel agreed that we should keep in mind the implications of Article 4 (explained below) for the ability of UNIIIC and the Lebanese authorities to continue their investigations when considering options for the transition from UNIIIC to the STL.

¶9. (U) Article 4(2) of the Statute of the STL reads, "Upon the assumption of the office of the Prosecutor, as determined by the SYG, and no later than two months thereafter, the Special Tribunal shall request the national judicial authority seized with the case of the attack against PM Rafiq Hariri and others to defer to its competence. The Lebanese judicial authority shall refer to the Tribunal the results of the investigation and a copy of the court's records, if any. Persons detained in connection with the investigation shall be transferred to the custody of the Tribunal."

¶10. (C) COMMENT: Notwithstanding the French concern, USUN would not read the provision to mean that UNIIIC or the Lebanese authorities would necessarily have to cease their activities once the Tribunal makes its request. For example, USUN would read the phrase "defer to its competence" to mean that the Lebanese judicial authorities would have to defer to

the Tribunal's competence only to the extent to which that competence is actually asserted. Nonetheless, we agree that nothing should be done that could compromise the integrity of a successful prosecution of the crime. END COMMENT.

Option 1: Let UNIIIC Mandate Expire

¶11. (C) Under Michel's first option, the Security Council would not renew UNIIIC's mandate, and Daniel Bellemare would assume his function as Prosecutor on June 16. Michel said that option would send a clear political message of progress in setting up the Tribunal and would be highly symbolic. On other hand, he said he thought it would place Bellemare and the prosecution in a difficult position since he has indicated that said the UNIIIC's work has not made sufficient progress to take this step by June 15. Designating Bellemare the Prosecutor on June 16 would also immediately shift the costs of his investigation onto the voluntary contributions to the STL, rather than the assessed contributions used to fund UNIIIC, and would require that the judges begin working at around the same time. Requiring the Lebanese judges to begin work around June 16 would mean they would have to be relocated outside of Lebanon beforehand, with their resulting subsistence costs borne by the Management Committee of the STL.

Option 2: Dual-Hat Bellemare

¶12. (C) Under the second option, the Security Council would extend the UNIIIC mandate until December 31, and the Secretary-General would announce separately that the

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Prosecutor would begin his functions during that period. Bellemare would thus function both as the UNIIIC Commissioner and the Tribunal Prosecutor. Michel said it would be legally possible for Bellemare to serve in both roles, although because the UNIIIC is funded through assessed contributions and the Tribunal is funded through voluntary contributions, the UN would have to devise a means for Bellemare to account properly for his time so the right funding source could be charged. Michel said this approach would send a clear political message and have the advantage of allowing Bellemare to retain UNIIIC's Chapter VII authority and permit funding of the UNIIIC through assessed contributions. On the other hand, it would create some degree of ambiguity concerning the functions Bellemare would exercise and still possibly raise expectations that indictments would be imminent.

Option 3: Give Bellemare Dual-Hat Option

¶13. (C) Under the third approach, the Security Council would extend the UNIIIC mandate until December 31, and the Secretary-General separately would give Bellemare the

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authority to perform in his capacity as Prosecutor if and when he deems it necessary. Michel said this option would send a positive political signal that Bellemare could assert his prosecutorial authorities if necessary and useful, while placing less pressure on Bellemare's investigation. It is still hard to see, however, how this could be done in practice without setting up the STL prosecutorial mechanism.

Option 4: Extend UNIIIC One Last Time

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¶14. (C) Under the fourth option, the Security Council would extend the UNIIIC mandate until December 31 with the indication that it will not grant any subsequent renewals,

and the Secretary-General would announce separately that Bellemare would assume his functions as Prosecutor on January 1, 2009.

Option 5: Extend UNIIIC and Delay STL Setup

¶15. (C) Under the fifth option, the Security Council would extend the UNIIC mandate until December 31, and the Secretary-General would make no pronouncements concerning

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when Bellemare would assume his functions as Prosecutor.

KHALILZAD